

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zachary Herman	Team: Squad #12	CCRB Case #: 201902845	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/03/2019 7:00 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 5/20/2021	Precinct: 70		
Date/Time CV Reported Wed, 04/03/2019 8:51 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/03/2019 8:51 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			Unknown
2. DT3 David Hudgens	7823	952864	WARRSEC
3. DT3 James Quirk	6955	951100	WARRSEC
4. CPT William Diab	00000	940125	WARRSEC
5. DT3 Piero Lasaponara	01161	947157	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 David Hudgens	Abuse: Detective David Hudgens damaged § 87(2)(b) property.	§ 87(2)(b)
B.DT3 David Hudgens	Abuse: Detective David Hudgens entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.CPT William Diab	Abuse: Lieutenant William Diab entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
D.DT3 David Hudgens	Abuse: Detective David Hudgens searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
E.CPT William Diab	Abuse: Lieutenant William Diab searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
F.DT3 David Hudgens	Force: Detective David Hudgens pointed his gun at § 87(2)(b)	§ 87(2)(b)
G.CPT William Diab	Force: Lieutenant William Diab pointed his gun at § 87(2)(b)	§ 87(2)(b)
H.DT3 James Quirk	Force: Detective James Quirk pointed his gun at § 87(2)(b)	§ 87(2)(b)
I.DT3 Piero Lasaponara	Force: Detective Piero Lasaponara pointed his/her gun at § 87(2)(b)	§ 87(2)(b)
J.DT3 James Quirk	Discourtesy: Detective James Quirk spoke discourteously to § 87(2)(b)	§ 87(2)(b)
K.DT3 David Hudgens	Discourtesy: Detective David Hudgens spoke discourteously to § 87(2)(b)	§ 87(2)(b)
L.CPT William Diab	Discourtesy: William Diab spoke discourteously to § 87(2)(b)	§ 87(2)(b)
M.DT3 Piero Lasaponara	Discourtesy: Detective Piero Lasaponara spoke discourteously to § 87(2)(b)	§ 87(2)(b)
N. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
O.DT3 David Hudgens	Discourtesy: Detective David Hudgens spoke discourteously to § 87(2)(b)	
P.DT3 James Quirk	Discourtesy: Detective James Quirk spoke discourteously to § 87(2)(b)	

## Case Summary

On April 3, 2019, § 87(2)(b) called the CCRB and filed this complaint over the phone.

In the morning of April 3, 2019, at approximately 7:00 a.m., § 87(2)(b) woke up to banging on his apartment door. § 87(2)(b) lives at § 87(2)(b) in Brooklyn. § 87(2)(b) approached his door and had a brief exchange with someone on the other side, who identified themselves as a police officer. After approximately twenty minutes, Detective David Hudgens, Detective James Quirk, Detective Piero Lasaponara, and Lieutenant William Diab of the Brooklyn South Warrants Squad broke down § 87(2)(b) front door using a ram (**Allegation A: Abuse of Authority**, § 87(2)(g)). The officers entered § 87(2)(b) apartment (**Allegations B and C: Abuse of Authority**, § 87(2)(g)). **Allegations D and E: Abuse of Authority**, § 87(2)(g) with their guns pointed (**Allegations F-I: Force**, § 87(2)(g)) and allegedly stated, “Why the fuck didn’t you open the door?” (**Allegations J-M: Discourtesy**, § 87(2)(g)). § 87(2)(g) was handcuffed and removed from his apartment, when he was in the hallway, he heard an officer say, “What a fuckin’ idiot” (**Allegation N: Discourtesy**, § 87(2)(g)).

After approximately thirty minutes, the officers brought § 87(2)(b) back into his apartment and spoke to him in his living room. During this conversation, Det. Hudgens told § 87(2)(b) “All of her shit is still here” (**Allegation O: Discourtesy**, § 87(2)(g)). Several minutes later, Det. Quirk, speaking to § 87(2)(b) stated, “Get rid of that fuckin’ BB gun, it’s illegal” (**Allegation P: Discourtesy**, § 87(2)(g)). After this, the officers left.

The investigation obtained video evidence from inside § 87(2)(b) apartment taken from surveillance cameras (BR02, BR03). The officers were not equipped with body-worn cameras.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Detective David Hudgens damaged § 87(2)(b) property.**

**Allegation (B) Abuse of Authority: Detective David Hudgens entered § 87(2)(b) in Brooklyn.**

**Allegation (C) Abuse of Authority: Lieutenant William Diab entered § 87(2)(b) in Brooklyn.**

**Allegation (D) Abuse of Authority: Detective David Hudgens searched § 87(2)(b) in Brooklyn.**

**Allegation (E) Abuse of Authority: Lieutenant William Diab searched § 87(2)(b) in Brooklyn.**

It is undisputed that Lieutenant Diab, Det. Hudgens, Det. Quirk, and Det. Lasaponara entered § 87(2)(b) in Brooklyn. It is undisputed that officers damaged the front door of the apartment to conduct their entry.

In his in-person testimony to the CCRB, § 87(2)(b) stated that officers identified themselves and knocked on his door for fifteen minutes. § 87(2)(b) stated that officers stated they knew he was in there. § 87(2)(b) did not specify who officers stated they were looking for. After approximately fifteen minutes, officers broke down § 87(2)(b) door and entered his apartment. Officers pointed their guns at § 87(2)(b) when they entered. § 87(2)(b) knelt on the ground and put his hands above his head. § 87(2)(b) stated that after the officers left, he evaluated the condition of his apartment. The following items in his bedroom were in a different condition: A 30-inch by six-inch TV stand had been opened. A 28-inch suitcase had been opened and clothes that

had been inside it were no longer inside. A 20-inch suitcase had been opened and clothes that were inside it were taken out (BR01).

Video evidence provided by § 87(2)(b) shows that officers ask § 87(2)(b) repeatedly about a female (although they do not appear to specifically mention § 87(2)(b) name), and do not ask him at all about § 87(2)(b). At 05:48 minutes in the video linked in Board Review 2, a voice says, "Listen, I'm going to let you rock. I'm not taking you anywhere, you can stay home. I'm going to come back here tomorrow, alright? [Unintelligible] if you/we can find out where she's actually staying." (BR02, BR03, BR23, BR24)

The video footage provided by § 87(2)(b) did not depict the bedroom, where the alleged searches of the TV stand and suitcase occurred. The video footage exclusively records § 87(2)(b) living room, which is not where he alleged the searches took place (BR02, BR03).

In his testimony to the CCRB, Det. Hudgens testified that he possessed an investigation card ("I-Card") for § 87(2)(b) he was assigned to investigate. Det. Hudgens did not state the address listed on the I-Card. He stated he conducted computer checks regarding § 87(2)(b) on April 3, 2019. A Domestic Incident Report ("DIR") that Det. Hudgens stated listed § 87(2)(b) as the opposing party. Det. Hudgens did not specify the age of the DIR. The subject apartment was listed as the incident location. Det. Hudgens did not state how old the DIR was. Det. Hudgens then conducted a check for the address, which returned an open arrest warrant for § 87(2)(b). Det. Hudgens did not recall if he conducted checks regarding § 87(2)(b) current address, other than the fact that the arrest warrant was active. Det. Hudgens did not testify to the age of the warrant. The morning of April 3, 2019, Det. Hudgens and other members of his team traveled to § 87(2)(b) in Brooklyn. Team members entered the building and traveled to the second floor, at least one other team member stood outside for security. Det. Hudgens knocked on the door and announced he was a police officer. While Det. Hudgens knocked on the door, the detective who was on exterior security stated that he had observed an unidentified male come to the window of the apartment. After approximately ten minutes of knocking, Det. Hudgens informed his team he was going to break down the door. Det. Hudgens struck the door with a ram, causing it to break. Det. Hudgens did not recall if he drew his firearm but stated that other team members entered the apartment with their firearms drawn (BR06).

Lieutenant Diab's testimony regarding the entry was largely consistent with that of Det. Hudgens. Lieutenant Diab did not examine or evaluate the I-Card or arrest warrant. Lieutenant Diab did not conduct any computer or database checks for the location. He stated that this would be the responsibility of the investigating officer. Lieutenant Diab instructed the officers to enter the apartment (BR10). Det. Quirk's testimony regarding the entry was consistent with that of Det. Hudgens (BR11).

Det. Hudgens, Det. Quirk, and Lieutenant Diab testified that they conducted searches in areas of the apartment where a person could be present. All three officers stated that the apartment had debris and loose items scattered throughout it, and that they had to move various items to access locations in the apartment where a person could be hiding. The officers did not testify to the specific items they moved or spaces they looked in; their testimony was regarding the general state of the apartment and the actions they took to conduct their search (BR06, BR10, BR11).

The arrest warrant for § 87(2)(b) was issued in 2007, and lists § 87(2)(b) in Brooklyn, as § 87(2)(b) address. § 87(2)(b) physical description is listed as unknown on the warrant (BR08).

The I-Card for § 87(2)(b) lists her address as § 87(2)(b)

Lieutenant Diab, Det. Hudgens, and Det. Quirk did not generate DD5s on April 2, 2019 or April 3, 2019. Lieutenant Diab and Det. Hudgens did not generate any DD5s regarding searches conducted regarding the warrant prior to traveling to the incident location (BR09).

Det. Hudgens prepared a city-involved accident report regarding the damage to the door. The form states “Male [inside of] apartment was warned numerous times of an active warrant for location. Male did not come to [the] door so the front door of the location was breached causing damage. Super of building was present at conclusion of investigation to fix door” (BR07).

NYPD Patrol Guide Procedure 217-04 states that uniformed members of service must prepare a City-Involved Accident Report in cases where the City may be involved and no personal injury results (BR18).

People v. Cabral, 570 NYS 2d 71, involved police officers entering a premises based on an arrest warrant. In Cabral, the court analyzed police actions under a reasonableness standard introduced in Payton v. New York, 445 US 573 [1980]. Payton held that an officer’s entry into a civilian’s premises on the basis of an arrest warrant had to be based on a reasonable belief that the subject of the warrant was present in the location. Cabral established that an officer needed to take additional steps to establish that a particular location was a subject’s current residence, and that the subject was physically present at the address at the time the officer traveled to the address to execute the warrant. In Cabral, the Court established that six and a half months was too long a time from the time a warrant was issued to rely on the warrant itself as evidence of the subject’s residence at a particular location.

In Onderdonk v. State, 170 Misc. 2d 155 (1996), the court ruled that officers must give due respect to property and may only damage property if doing so is reasonably necessary to carry out their duties (BR27).

People v. Petralia, 62 N.Y.2d 47(1984), cited a ruling holding that observations of fellow officers engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number, and further expanding this analysis to hold that officers may rely on fellow officers in suppression hearings (BR28).

All parties agree that Det. Hudgens, Lieutenant Diab, Det. Quirk, and Det. Lasapomara entered and searched the residence. According to officer testimony, Det. Hudgens was the officer assigned to investigate the I-Card and who located the arrest warrant. Det. Quirk and Det. Lasaponara, who were not assigned to investigate the arrest warrant or I-Card, were present solely as members of the team assisting Det. Hudgens. As such, they were not responsible for completing the required checks of the validity of the warrant nor were they responsible for supervising that investigation. Relying on the fellow-officer rule presented in Petralia, these officers were therefore not listed as subjects of the entry or search allegations.

By contrast, Det. Hudgens, who was responsible for conducting the investigation into the arrest warrant, was listed as a subject of the entry and search allegations. Likewise, Lieutenant Diab, as the supervisor on scene, was in a position to review the investigative steps taken by Det. Hudgens. As such, he was also listed as a subject of the entry and search allegations.

People v. Cabral provides a framework to analyze whether an officer’s belief that an individual is at a location is reasonable. In Cabral, the court determined that a “last known address” of a subject of

an arrest warrant six and a half months prior to its execution constituted an insufficient basis to believe that the subject of the warrant continued to reside at that location. § 87(2)(g)

§ 87(2)(b) Cabral also notes that officers may conduct additional checks to verify whether an address listed on a warrant is currently associated with the individual listed on the warrant. However, Det. Hudgens admitted that he did not conduct any additional checks with regards to the arrest warrant. § 87(2)(g)

§ 87(2)(b) testified that, in addition to searching the residence for an individual, the officers also conducted searches in areas where a person could not have been hidden. § 87(2)(g)

Detective Hudgens admitted to damaging the door to enter the residence, and prepared an NYPD accident report regarding the damage to the door, consistent with NYPD police procedure regarding property damage in the course of forced entries. § 87(2)(g)

§ 87(2)(g)

**Allegation (F) Force: Detective David Hudgens pointed his gun at § 87(2)(b)**

**Allegation (G) Force: Lieutenant William Diab pointed his gun at § 87(2)(b)**

**Allegation (H) Force: Detective James Quirk pointed his gun at § 87(2)(b)**

**Allegation (I) Force: Detective Piero Lasaponara pointed his gun at § 87(2)(b)**

§ 87(2)(b) testified that officers entered § 87(2)(b) in Brooklyn, with their guns drawn and pointed at him (BR01).

Det. Hudgens testified that he struck the door with a ram, causing it to break. Det. Hudgens did not recall if he drew his firearm himself, but stated that the team entered the apartment with their firearms drawn, as they were entering on the basis of the arrest warrant for § 87(2)(b)

Det. Quirk's understanding of police procedure is that police officers are allowed to draw and point their weapons when they are conducting a forcible entry into a location for which they have a valid arrest warrant. Det. Quirk did not specifically recall if he drew his weapon when the officers breached the door, but stated he probably did. He stated that other officers likely did as well (BR11).

Lieutenant Diab testified that he did not recall if any officers drew their guns, but stated that drawing a firearm during a forcible arrest warrant entry was consistent with police procedure (BR10).

Patrol Guide Procedure 221-01 states that the decision to display or draw a firearm should be based

on an articulable belief that the potential for serious physical injury is present. When a uniformed member of service determines that the potential for serious physical injury is no longer present, the uniformed member of service will holster the firearm as soon as practicable. Additionally, an officer's use of force must be reasonably necessary to gain control or custody of a subject (BR17).

§ 87(2)(b) testified that multiple police officers pointed their firearms at him when entering his apartment. Although officer testimony is inconsistent regarding whether any specific officer drew or pointed their firearms at § 87(2)(b) Det. Hudgens was certain that the team did indeed have their firearms drawn and neither Det. Quirk nor Lieutenant Diab denied that officers had their guns drawn. § 87(2)(g)

§ 87(2)(g)

**Allegation (J) Discourtesy: Detective James Quirk spoke discourteously to § 87(2)(b)**

**Allegation (K) Discourtesy: Detective David Hudgens spoke discourteously to § 87(2)(b)**

**Allegation (L) Discourtesy: Lieutenant William Diab spoke discourteously to § 87(2)(b)**

**Allegation (M) Discourtesy: Detective Piero Lasaponara spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that immediately after officers entered his apartment, all four officers asked, "Why the fuck didn't you open the door?" (BR01).

Video evidence provided by § 87(2)(b) does not cover this portion of the incident.

Lieutenant Diab, Detective Quirk, and Detective Hudgens, in the CCRB testimony, all testified that they did not use profanity or did not recall using profanity towards § 87(2)(b) when they entered his apartment. Detective Lasaponara did not provide testimony to the CCRB (BR06, BR10, BR11).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (N) Discourtesy: An officer spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that while he was outside of his apartment in the hallway, an officer said to another officer, "What a fuckin' idiot" in reference to § 87(2)(b) § 87(2)(b) could not see who made this statement given his position outside of the apartment. He stated he believed this was an officer he described as a white male with a beard, a heavy build, six feet tall, wearing a black baseball cap. He attributed the statement to this officer because of his voice (BR01).

Internal surveillance footage from § 87(2)(b) apartment did not capture this alleged statement (BR02, BR03).

When Det. Hudgens appeared at the CCRB, he listed his height as six feet tall. During his CCRB interview, Det. Hudgens was shown video from Board Review 2, from a surveillance camera inside § 87(2)(b) apartment. He was shown a static frame at 1:23 minutes into the recording, and he identified himself as the bearded officer depicted wearing jeans, a black hoodie, and a black baseball cap. Det. Hudgens also identified Det. Quirk as the bearded officer who appears at 5:44

minutes into the recording of the video linked in Board Review 2. Det. Hudgens was not specifically asked regarding whether he made the statement, “What a fuckin’ idiot” regarding § 87(2)(b). Det. Hudgens did testify that he did not recall using any profanity during the phase of the incident prior to interacting with § 87(2)(b) on the couch (BR 06).

When Det. Quirk appeared at the CCRB, he listed his height as six feet one inch tall. Det. Quirk was not asked specifically about this allegation but testified he did not recall any officer using any profanity during the entry or search of § 87(2)(b) apartment (BR 10).

Lieutenant Diab specifically did not recall any officer stating, “He’s a fuckin’ idiot” in regards to § 87(2)(b) (BR 11).

Although § 87(2)(b) attributed a physical description to the subject of this complaint, this description is insufficient because he did not see which officer made this statement. Further, the provided description encompasses both Det. Hudgens and Det. Quirk, as they are both bearded white males of a similar height with only a baseball cap as a distinguishing attire. No officer testified to hearing the alleged statement. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (O) Discourtesy: Detective James Quirk spoke discourteously to § 87(2)(b)**

Video from an internal surveillance camera located in § 87(2)(b) apartment captured this allegation. At 06:02 minutes into the video, someone states "all of her shit is still here." At 06:12, that same person says "when she comes here to pick up her shit (BR02, BR24).

Det. Hudgens was shown video from Board Review #2, from a different surveillance camera inside § 87(2)(b) apartment, was shown video starting at 5:44 minutes into the recording, Det. Hudgens stated the male in the black hoodie with white markings on the side is Det. Quirk, and identified himself as the male in the black hat whose back is to the camera. The video was stopped at -6:20. Det. Hudgens identified Det. Quirk as the speaker of the statement, “All of her shit is still here. When she comes back here to pick up her shit, call us (BR02, BR03, BR06).”

Det. Quirk stated he had observed property he believed may have belonged to the female inside the apartment. He did not specifically recall making the statement, “All of her shit is still here” to § 87(2)(b). He stated it was possible he made that statement, and that he would have made that statement, “Off the cuff,” to attempt to rattle § 87(2)(b) into providing additional information. Det. Quirk did not affirmatively state that he made the statement (BR11).

Det. Hudgens was shown video from Board Review #3, from a surveillance camera inside § 87(2)(b) apartment. He was shown a static frame at 1:23 minutes into the recording, and identified himself as the officer depicted wearing jeans, a black hoodie, and a black baseball cap. At static frame 4:53, an individual is visible to Det. Hudgens’ left, he identified that individual as Det. Quirk (BR03).

Patrol Guide Procedure 200-02 states that uniformed members of service must render their services with courtesy and civility (BR25).

Det. Hudgens identified Det. Quirk as the speaker of the statement, “All of her shit is still here. When she comes back here to pick up her shit, call us.” Det. Quirk stated he may have made this statement, and attempted to provide a basis for making this statement. This is suggestive of his making the statement. § 87(2)(g)

§ 87(2)(g)



§ 87(2)(g)

**Allegation (P) Discourtesy: Detective David Hudgens spoke discourteously to § 87(2)(b)**

Footage captured from inside § 87(2)(b) apartment captures an individual speaking off-screen to § 87(2)(b) inside his apartment, the speaker says, “Get rid of that fucking BB gun, it’s illegal” (BR02; BR11).

Det. Hudgens was shown internal surveillance footage from Board Review #03, from 7:07, nothing is visible on screen. A statement can be heard, “Get rid of that fuckin BB gun, it’s illegal.” Det. Quirk stated that the person who made that statement, “Sounded like me.” He did not definitively state the person who made the statement was himself (BR06).

As per the Patrol Guide procedure cited in the rules section for Allegation S, officers must be courteous in their interactions with civilians (BR25).

On the basis of Det. Hudgens’ testimony that the person who made the statement sounded like him, the investigation has concluded that based on that testimony, Det. Hudgens was the speaker of that statement. § 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b)
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- Detective Hudgens has been a member of service for seven years and has been a subject in two CCRB complaints and seven allegations, of which none were substantiated. Both cases are open at the CCRB.
- Detective Quirk has been a member of service for eight years and has been a subject in six CCRB complaints and thirteen allegations. Det. Quirk has not had a substantiated CCRB complaint § 87(2)(g), § 87(4-b)
- Captain Diab has been a member of service for thirteen years and has been a subject in 20 CCRB cases and 64 allegations.
  - 200800389 involved substantiated allegations of force and discourtesy. The Board recommended charges and the NYPD imposed a penalty of 35 days of forfeited vacation time.
  - 201507839 involved a substantiated allegation of abuse of authority. The Board recommended formalized training and the NYPD has not yet imposed discipline.

- 201803645 involved substantiated allegations of abuse of authority. The Board recommended command discipline A and the NYPD did not impose discipline.
- 201805446 involved a substantiated allegation of force. The Board recommended command discipline B and the NYPD has not yet imposed discipline.
- § 87(2)(g) [REDACTED]
- Detective Lasaponara has been a member of service for eleven years and has been a subject in eleven cases and 28 allegations.
  - 201301007 involved a substantiated allegation of abuse of authority. The board recommended command instructions and the NYPD did not impose discipline.
  - 201810023 involved a substantiated allegation of abuse of authority. The board recommended command instructions and the NYPD has not yet imposed discipline.

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) [REDACTED] rejected mediation in the course of his sworn statement.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
- On January 14, 2020, a FOIL request was submitted to the New York City Office of the Comptroller for all notices of claim filed regarding this case. After a diligent search, the New York City Office of the Comptroller did not locate any notices of claim related to this case (BR22).

Squad No.: 12

Investigator: <u>Zachary Herman</u>	Investigator <u>Zachary Herman</u>	July 17, 2020
Signature	Print Title & Name	Date

Squad Leader: <u>Carlmais Johnson</u>	IM <u>Carlmais Johnson</u>	July 23, 2020
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date